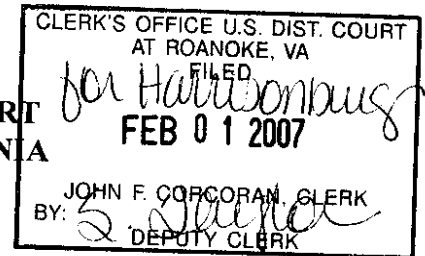


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION



UNITED STATES OF AMERICA)

v.)

EVELYN MARIE HICKERSON)

Criminal No.: 5:04CR30025

MEMORANDUM OPINION
AND ORDER

By: Samuel G. Wilson
United States District Judge

This is a motion pursuant to 18 U.S.C. § 3582 (c)(2) by defendant, Evelyn Marie Hickerson, for a recalculation of her guidelines lowering her base offense level (pursuant to an amendment she has not specified) and a corresponding reduction of her sentence. The court finds no retroactive guideline amendment lowering Hickerson's base offense level and denies her motion.

I.

In 2004 Hickerson pled guilty to conspiracy to distribute and possess with intent to distribute in excess of 5 kilograms of cocaine or a mixture or substance containing a detectable amount cocaine in violation of 21 U.S.C. § 846. Her plea agreement stipulated that she would be held accountable for at least 3.5 but less than 5 kilograms of cocaine powder. This established a base offense level of 30 pursuant to U.S.S.G. § 2D1.1(c)(5), and she qualified for and received "safety valve" treatment under guideline § 5C1.2, with a corresponding two level decrease in her offense level. With an additional three level decrease for acceptance of responsibility, her total offense level was 25, which, together with her criminal history category of I, produced a guideline range of 57 to 71 months. The court sentenced her at the bottom of that range—57

months.


II.

Hickerson did not identify the amendment she claims lowered her base offense level, and the court finds none applicable. Indeed, the cocaine quantity stipulated in her plea agreement – 3.5 to 5 kilograms – still produces a base offense level of 30 under guideline § 2D1.1(c)(5).

III.

For the foregoing reasons, it is **ORDERED and ADJUDGED** that Hickerson's motion to modify her term of imprisonment pursuant to § 3582(c)(2) is **DENIED**.

ENTER: This January 31, 2007.


UNITED STATES DISTRICT JUDGE